

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**INCOME TAX REFERENCE No. 46 of 1996****For Approval and Signature:****HONOURABLE MR.JUSTICE R.S.GARG****HONOURABLE MR.JUSTICE D.H.WAGHELA**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?

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COMMISSIONER OF INCOME TAX - Applicant(s)
Versus
COSMIC ELECTRONICS - Respondent(s)

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Appearance :

Ms. Mona Bhatt for MR MANISH R BHATT for Applicant(s) : 1,
NOTICE SERVED for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG**and****HONOURABLE MR.JUSTICE D.H.WAGHELA****Date : 05/09/2006**

ORAL JUDGMENT**(Per : HONOURABLE MR.JUSTICE R.S.GARG)**

1. The Income Tax Appellate Tribunal, Ahmedabad Bench 'A' has referred the following common question of law for opinion of this Court which arose from Income Tax Appeals No. 1020 & 1021/Ahd/1989 relating to Assessment Year 1984-85 and 1985-86:

“Whether on the facts and in the circumstances of the case the Tribunal was right in law in directing to treat the rental income of factory sheds as business income and to allow repairs and depreciation on the same ?”

2. The facts in nutshell, for disposal of the present matter are, that the assessee was carrying on business of manufacturing and selling of electronic goods namely, tape recorders,

television sets, amplifiers, speakers, record-players etc. The assessee had obtained factory sheds at Vadodara which are located in the industrial area of Vadodara. Out of these sheds, the assessee let out one shed to M/s.Gujarat Electro Ancil Pvt.Ltd. for an annual rent of Rs. 5,000/- in the year 1982 which came to be increased to Rs. 12,000/- p.m. Yet another shed was let out to Gujarat Compo Electronics Pvt.Ltd. at an annual rent of Rs.6,000/- for the Accounting Year, 1983. The assessee claimed repairs and depreciation in respect of both the sheds submitting *inter-alia*, that the rental income from these two sheds is income from business. The Assessing Officer did not agree with the submissions made by the assessee, and he accordingly held that the income could be treated as income from property and he accordingly restricted the deductions under the head of 'repairs' to the extent of 1/6th of the rental income. The assessee, being dissatisfied by the order passed by the Assessing Officer took

up the matter before the learned Commissioner of Income Tax (Appeals), Vadodara. The C.I.T (Appeals) accepted the contention of the assessee and asked the Assessing Officer to allow the deduction for repairs and depreciation against the rental income of sheds treating the said income to be income from business. The order passed by the C.I.T. (Appeals) being not palatable to Revenue, the matter was taken up before the Tribunal which also confirmed the order passed by the C.I.T. (Appeals). On an application by the Revenue, the above referred question has been referred to this Court for its opinion.

3. We have heard Ms. Mona Bhatt, learned counsel for the Revenue. None appears for the respondent, though the office report says that the assessee is served. Ms. Bhatt, learned counsel for the Revenue, submits that the C.I.T. (Appeals) and the Tribunal were not justified in observing that the income from the sheds would be

treated to be income from business, when the facts clearly show that the additional sheds available with the assessee were let out to certain concerns on some rent. According to her, if leasing out the property is for deriving certain benefits in addition to the rental income, then only it would be taken to be an act of enduring nature and the income could be treated to be from business, and if the facts are not brought on the records, then the income from the sheds would be taken to be the rental income from the property and will have to be treated as income from the property.

4. From the findings recorded by the learned C.I.T. (Appeals) and the Tribunal, it clearly appears that the assessee is engaged in the business of manufacturing and selling of electronic goods. It had let out one shed to M/s. Gujarat Electro Ancil Pvt. Ltd. which according to the submissions of the assessee, are the sister concerns of the assessee. It has also

been brought on record that the assessee needs certain components for purposes of manufacturing and these two sister concerns are manufacturing those parts which are to be used as components in the electronic gadgets to be manufactured by the assessee. To obtain the raw material or parts of the final product, if certain facilities are extended by the assessee, then such facilities would be taken to be a business adventure and any income derived from letting out the property to another sister concern to ensure regular supply of the parts would be taken to be a business income.

5. Under the circumstances, we must hold that the C.I.T. (Appeals) and the learned Tribunal were absolutely justified in holding the rental income as part and parcel of the business income.

6. The Reference is answered against the interest of the Revenue. It is accordingly disposed of.

[R. S. Garg, J.]

[D. H. Waghele, J.]

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